

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 10,903

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

DORSEY E. KINNEY,
Appellant,

v.

BEBYL L. KINNEY,
Appellee.

Joseph W. Stewart
CLERK

455

Appeal from the United States District Court
for the District of Columbia

REX K. NELSON,
Columbian Bldg.,
Washington, D. C.,
Attorney for Appellant.

No. 10,903

QUESTION PRESENTED

Is an Ohio maintenance Order, not bottomed upon divorce, entitled to full faith and credit as a foreign judgment in the District of Columbia, where under the laws of the State of Ohio such an order is held not entitled to full faith and credit in sister States, nor deemed a judgment in Ohio until reduced to that status by appropriate proceedings.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,903

DORSEY E. KINNEY,
Appellant,

v.

BERYL L. KINNEY,
Appellee.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a summary judgment granted by the United States District Court on motion of appellee for past due installments of an Ohio maintenance Order and is brought under the authorization of revised Title 28 of the United States Code.

STATEMENT OF THE CASE

On September 27, 1939, the Court of Common Pleas, Cuyahoga County, Ohio, entered an Order requiring payment by the appellant of \$60.00 monthly to appellee, his wife, until further order of the Court, the basis therefor being gross neglect of duty and abandonment. (3A) Appellant complied with this Order until November 15, 1941. On December 5, 1949, appellee filed a complaint on a foreign judgment (2A) against appellant in the Court below praying judgment for \$5,040.00. Appellant denied liability by answer (6A) and both appellee (7A) and appellant (8A) filed motions for summary judgment, the appellee alleging, and appellant denying, that the maintenance Order was a judgment entitled to full faith and credit under the Constitution.

On October 18, 1950, following argument, the Court below granted appellee's motion and awarded her judgment in the sum of \$5,040.00 and denied appellant's motion (10A). A motion by appellant to vacate judgment and rehear his motion for summary judgment was denied on November 27, 1950 (11A) and this appeal was taken.

SUMMARY OF ARGUMENT

The Court below erred in granting appellee's motion for summary judgment for \$5,040.00 against appellant, the basis therefor being appellee's complaint upon an alleged foreign judgment. The document relied upon by appellee as a foreign judgment was a maintenance order only entered in the Court of Common Pleas, State of Ohio, Cuyahoga County, on September 27, 1939. Under the laws of the State of Ohio such an order is in fact a finding only, not entitled to full faith and credit as a judgment in sister States, nor deemed a judgment in

Ohio, and it was error for the Court below to give the order that weight and effect which is denied in the State of origin.

ARGUMENT

The Supreme Court in *Sistaire v. Sistaire*, 218 U. S. 1, 30 S. Ct. 682, established the rule that past due and unpaid alimony installments were within protection of the full faith and credit clause of the Federal Constitution unless there was modification prior to maturity of such installments or unless enforcement of the Order was so discretionary with the Courts of that State that they might annul or modify the decree even as to overdue and unsatisfied installments. Similar are the holdings in *Lynde v. Lynde*, 162 N. Y. 405, *Barber v. Barber*, 323 U. S. 77, 65 S. Ct. 137, and others, in all of which the alimony was based upon a divorce and final adjudication of the parties' rights. It is incumbent upon the court of which relief is sought to determine if the alimony or maintenance order is or is not a final judgment for a fixed sum according to the laws and judicial determinations of the originating State. If the maintenance order in this case is subject to modification by Ohio law as to past due and unpaid installments, and is not deemed a final judgment entitled to full faith and credit in sister states by Ohio judicial interpretation, then it cannot be deemed a foreign judgment in this jurisdiction for entry of summary relief with all defenses to the action stricken.

The Ohio courts present two lines of decisions in respect to alimony orders *based upon divorce*. *Meister v. Day*, 20 Ohio Appeals 224, 151 N. E. 786, *Van Almsick v. Van Almsick*, 69 Ohio Appeals 425, 42 N. E. (2) 228, *Kosen v. Kosen*, Court of Appeals of Ohio, Cuyahoga County, 42 N. E. (2) 778, and *Collins v. Collins*, Court of Appeals of Ohio, Wayne County, 73 N. E. (2) 814,

represent Ohio judicial determination that an order for alimony based on divorce, wherein the court reserves modification powers, cannot be sued upon as a judgment in Ohio or sister states; must first be reduced to judgment by appropriate action, and that an action to reduce past due installments to judgment is an appeal to the Court's discretion.

The alimony order under consideration in *Meister v. Day, supra*, contained the phrase "until further order of the Court." The wife petitioned for arrearages in the usual form of a suit upon a judgment in the same court that granted the divorce. In denying her petition the court stated:

It is settled law in Ohio, and by the great weight of authority throughout the United States, that an order for alimony, not for a fixed sum, but payable in installments of which the Court preserves the right of modification, will not support an action to recover a money judgment in another state, as the same is not a final judgment.

. . . A petition for modification would *constitute an appeal to the discretion of the Court*, as the determination of the amount of alimony did in the first instance, and in the exercise of sound discretion the court would have a *right to grant or refuse modification*. The plaintiff had no absolute right to a judgment for any specific sum. (Italics supplied)

By the foregoing line of decisions, then, an alimony order, based upon divorce, and reserving modification powers by the issuing court cannot under Ohio law be sued over as upon a judgment there or in other States. The power of the Ohio Courts to refuse modification to the wife for arrearages simply means the power to modify, cancel or annul past due installments. These decisions are not in conflict with the holding in *Sistaire v. Sistaire*.

Armstrong v. Armstrong, 117 Ohio St. 558, 160 N. E. 34, *Speer v. Speer*, 74 N. E. (2) 97, Court of Common Pleas, Lucas County, Ohio, and *McPherson v. McPherson*, 88 N. E. (2) 814, Court of Appeals of Ohio, Miami County, represent a line of decisions holding the orders there under consideration were entitled to full faith and credit as judgments, there being no reserved power in the orders to annul past due installments. The *Speer v. Speer* holding, however, was most indecisive, the court first stating it had no power to modify retroactively, and then proceeded to modify the order in question retroactively anyway. The holding in *Armstrong v. Armstrong* is a restatement of the rule set forth in *Sistaire v. Sistaire*.

The foregoing lines of decisions are set forth for the purpose of showing that even an alimony order based upon divorce, a final adjudication of the parties' rights, cannot automatically be accorded full faith and credit in Ohio or sister states merely for the asking. These cases are not in point with the case presented for consideration by this Court, and the weight and credit to be accorded a straight Ohio maintenance order, not bottomed upon a final adjudication of the parties' rights, is considered by a separate line of Ohio decisions.

Gilbert v. Gilbert, 83 Ohio St. 265, first distinguished between straight maintenance orders and those bottomed on divorce, and decisively stated that a maintenance order, only, was not a judgment entitled to full faith and credit in sister states, nor deemed a judgment under the laws of Ohio. The Court stated:

In rendering a decree for alimony alone, the court necessarily has in view that the marital contract still exists; that the parties are still bound by all its mutual obligations; that they may become reconciled, and that the grounds and the desire for the allowance may be wiped out at any time. A decree in such a case is

continually subject to modification, while in rendering a decree for divorce and alimony, the court determines the ultimate relation of the parties, and fixes the amount and the mode of payment of any money or property allowance to the wife.

* * *

It is contended on behalf of Mrs. Gilbert that the court in South Dakota should have accepted the order in Cuyahoga County as conclusive on it, and should have given it the same force as a judgment of another state is entitled to. This contention is not sound. *A money decree for alimony is not a judgment in the full legal meaning of the term.* (Italics supplied)

The Court reversed itself a few years later in the *Gilbert* case, 90 Ohio St. 417, 108 N. E. 1121, and remanded for further proceedings on another point involved. The holding as to the difference between a final alimony and divorce order and a straight maintenance order was not reversed, is followed to the present time in succeeding cases, and is cited as authority in Page's Ohio General Code, Annotated, Volume 9, Section 11997.

The meaning and effect of a straight maintenance order subsequently was considered in *Pace et al v. Pace* and *Pace v. Pace et al*, two cases consolidated, 41 Ohio Appeals 130, 180 N. E. 81, wherein the husband contended the maintenance order was a finding, nothing more, and not a judgment. The Court agreed with that contention, and specifically held that such an order was subject to modification retroactively and execution thereon was barred until reduced to a decree in gross.

The Court stated:

The Supreme Court later considered the *Gilbert* case in 90 Ohio St. at page 417, 108 N. E. 1121, but it is *certain that the court did not recede from its prior position* previously stated in the rule of law announced therein, which is applicable to this suit. The *Gilbert* case seems to have been again consid-

ered in *Armstrong v. Armstrong*, 117 Ohio St. 558, 556, 160 N. E. 34, 57 ALR 1108. A reading of this case discloses that this was a divorce and alimony action, and an interesting question is presented as to whether or not a decree for alimony may thereafter be altered or modified in such fashion that it may have a retroactive effect, or whether this right of modification only extends to future installments, and not to alimony already accrued. The court in the *Armstrong* case distinctly says that the *Gilbert* case is not authority there, and the court quotes with approval the portion of its holding in the *Gilbert* case which we have hereinbefore set forth.

It may therefore be reasoned that it is the law of the State, in a suit for alimony alone, that a decree for allowance of alimony in installments may thereafter be modified not only as to the future installments of alimony, but that such a modification may have a retroactive effect, and that, therefore, in view of the reasons stated, a decree for alimony in installments is not a judgment upon which execution may be issued, but is in fact but an allowance which may thereafter be reduced to a decree in gross which may then have the force of a judgment upon which execution may issue. (Italics supplied)

Because of the question involved in the *Pace* case it was certified to the Supreme Court of Ohio for review, and in *Haldemen v. Pace*, 125 Ohio Supreme Court 53, 180 N. E. 547, the decision of the lower court was affirmed.

If appellee rely upon *Armstrong v. Armstrong*, *supra*, for support, a review of the case discloses the Court cited with approval the *Gilbert v. Gilbert*, *supra*, differentiation between maintenance orders and divorce alimony. The holding of the court in the *Gilbert* case is also approved by both lines of decisions in alimony divorce awards, i. e., *Meister v. Day*, *Van Almsick v. Van Almsick*, *Armstrong v. Armstrong*, *Speer v. Speer*, *McPherson v. McPherson*, 88 N. E. (2) 814, as well as the

Ohio General Code as heretofore set forth. Further, the Ohio Supreme Court considered the question on two occasions, beginning with the *Gilbert* case, in 1911, and following with an affirmation of that view in 1932 with the *Haldemen v. Pace* case. A reading of the maintenance order in this case (4A) shows the intent of the Court not to be in conflict with the law of Ohio. The third paragraph orders payment of the alimony *until further order of the court*; (5A) the fourth and fifth paragraphs order payment of an attorney's fee and cost for which judgment was rendered.

CONCLUSION

By the law of the State of Ohio a straight maintenance order, not bottomed on divorce nor a final adjudication of the parties' rights, is a finding only, and such an order is not deemed a judgment in Ohio nor entitled under the laws of that state to full faith and credit in sister states. The maintenance order herein sued upon as a final judgment is in fact a finding only, subject to modification retroactively in Ohio, and the court below erred in according this order the effect of a foreign judgment, though denied that effect in Ohio, and thereby cut off all defenses to be presented by appellant upon trial of the cause.

It is respectfully submitted that the judgment below should be reversed.

REX K. NELSON,
Columbian Bldg.,
Washington, D. C.,
Attorney for Appellant.

1917

APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,903

DORSEY E. KINNEY,

Appellant,

v.

BERYL L. KINNEY,

Appellee.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

1 Filed Dec 5 1949 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF COLUMBIA

BERYL L. KINNEY
2951 Coleridge Road
Cleveland Heights, Ohio

Plaintiff

v.

DORSEY E. KINNEY
4714 Harrison Street, N. W.
Washington, D. C.

Defendant

Civil Action No. 5173 - '49

Complaint on a Foreign Judgment

1. The jurisdiction of this Court is based upon the fact that the sum involved herein amounts to more than \$3,000, exclusive of interest and costs.

2. Heretofore, on, to wit, the 15th day of November, 1941, plaintiff obtained a judgment against the defendant in the Court of Common Pleas in Cayuga County, State of Iowa, in the full sum of \$60 per month, which said judgment is still outstanding and of full force and effect. Subsequent to the date thereof, defendant has not made any payments on said judgment, since November 15, 1941.

3. There is accordingly still due and owing from the defendant to the plaintiff the full sum of \$5,040, together with interest thereon from the 15th day of November, 1941, on account of said judgment.

WHEREFORE, plaintiff demands judgment against the

defendant in the full sum of \$5,040, with interest thereon from November 15, 1941, besides costs of this suit.

LUBAR, O'KEEFE, FRIEDLANDER
AND MELROD

By /s/ Leonard S. Melrod

Leonard S. Melrod

Attorneys for Plaintiff

200 Woodward Building

Washington, D. C.

* * * *

8

Plf. No. 1 Id.

Filed Oct 12 1950 Harry M. Hull, Clerk

CERTIFICATE—Revised Statutes of the United States,
Page 171, Section 905, Second Edition.

THE STATE OF OHIO

Cuyahoga County ss.

Civil #5173-49

BE IT REMEMBERED, That on the 5th day of September in the year of our Lord, One Thousand Nine Hundred and Thirty Nine, the COURT OF COMMON PLEAS within and for the County of Cuyahoga and State of Ohio, convened at the Court House, in the City of Cleveland, pursuant to law. Present

Hon. Frank J. Lausche, Hon. Alva R. Corlett, Hon. Lee E. Skeel, Hon. John P. Dempsey, Hon. Harrison W. Ewing, Hon. Frank J. Merrick, Hon. Joy Seth Hurd, Hon. Walter McMahon, Hon. Samuel E. Kramer, Hon. Samuel H. Silbert, Hon. George P. Baer, Hon. Charles J. McNamee, Hon. Frederick P. Walther, Hon. Frank S. Day, Hon. Homer G. Powell, JUDGES, also present John J. Bushner CLERK of said Court, and Martin L. O'Donnell SHERIFF of said County; His Honor, Judge George P. Baer presiding for

the trial of Divorce causes, at said term, Court being open according to law, the Divorce business is disposed of as follows, to-wit:

THE STATE OF OHIO

Cuyahoga County ss.

IN THE COURT OF COMMON PLEAS

No. 474,514

Beryl L. Kinney, Plaintiff,

vs.

Dorsey E. Kinney, Defendant.

Divorce

On September 27th A. D. 1939, being a day in said September Term of said Court.

This cause came on to be heard on this 18th day of September, 1939, upon the Petition, answer, and the evidence, the cross petition having been dismissed without prejudice by defendant; and, on consideration thereof, the court finds that the defendant has been duly and legally served with summons, together with copy of the petition according to law; that the facts set forth in said petition are true; that the plaintiff was a bona fide resident of Cuyahoga County for more than thirty days last past, prior to the filing of her petition; and that the parties were married as in the petition set forth.

The court, being fully advised in the premises, finds that the allegations of the petition are true; that the defendant has been guilty of gross neglect of duty and of abandonment of the plaintiff without good cause; that there is a separation in consequence of said gross neglect of duty and abandonment on the part of the defendant; and that by reason thereof the plaintiff is entitled to the relief prayed for.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant pay to the plaintiff as and for alimony, the sum of Sixty Dollars (\$60) per month, in semi-monthly instalments of thirty dollars (\$30) each, pay-

able on the 1st and 15th of each month, the first semi-monthly payment of Thirty Dollars (\$30) being due and payable on or before the 1st day of October, 1939, until the further order of this court, and that said payment of Sixty Dollars (\$60) per month, cease upon the death of either party.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant shall pay to the plaintiff as and for alimony, and as and for fees for her attorney, the sum of Fifty Dollars (\$50.00) for which judgment is hereby rendered.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the costs of this action be paid by defendant, for which judgment is hereby rendered, against him.

/s/ George P. Baer

10 THE STATE OF OHIO

Cuyahoga County ss.

I, LEONARD F. FUERST, Clerk of the Court of Common Pleas, within and for said county, and in whose custody the files, journals and records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the Journal of the proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

IN TESTIMONY WHEREOF, I do hereby subscribe my name officially, and affix the seal of said Court, at the Court House, in the City of Cleveland, in said county, this 7th day of October A. D. 1949

LEONARD F. FUERST, Clerk

By /s/ R. J. McDonnell,

Deputy Clerk

(SEAL)

I, Samuel E. Kramer, Presiding Judge of the Court of Common Pleas, within and for the Eleventh Judicial Dis-

trict of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify that LEONARD F. FUERST was, at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio; and that said Clerk is the officer in whose custody said original Journal is required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy is in due form of law.

SIGNED BY ME, and dated at Cleveland, Cuyahoga County, Ohio, this 7th day of October A. D. 1949.

/s/ Samuel E. Kramer
Judge, as aforesaid.

• • • • •

2 Filed Mar 23 1950 Harry M. Hull, Clerk

Answer

1st Defense

The complaint fails to state a claim within the cognizance of this court or upon which relief can be granted.

2nd Defense

The complaint fails to set forth judgment of a court of record.

3rd Defense

1. The defendant denies that he is indebted to the plaintiff in the manner and form as alleged.

2. The defendant says that he is not indebted to the plaintiff as alleged, in the amount claimed or any amount whatsoever.

3. The defendant denies that he is indebted to the plaintiff as alleged; that if he be indebted at all, any claim

therefor prior to the three years next preceding the filing of the complaint is barred by the statute of limitations.

4. The defendant denies that he is indebted to the plaintiff as alleged; that if he be indebted at all, any claim therefor prior to filing of the complaint is now stale and has heretofore been waived by the plaintiff.

WHEREFORE, the premises considered, defendant prays dismissal of the complaint herin.

/s/ Rex K. Nelson

Rex K. Nelson

/s/ Albert F. Graham

Albert F. Graham

Attorneys for Defendant

Columbian Building

Washington, D. C.

3 Filed Jul 24 1950 Harry M. Hull, Clerk

Motion for Summary Judgment

Comes now the plaintiff, by her attorney, and moves the Court for a Summary Judgment against the plaintiff upon the grounds that there is no genuine issue as to any material fact and plaintiff is entitled to judgment against the defendant, as a matter of law.

LUBAR, O'KEEFE, FRIEDLANDER
& MELROD

By: /s/ Leonard S. Melrod

Leonard S. Melrod

Attorney for Plaintiff

200 Woodward Building

Washington, D. C.

4 Filed Jul 28 1950 Harry M. Hull, Clerk

Objection to Motion for Summary Judgment

Comes now the defendant and objects to the Motion for Summary Judgment, and for reason therefor states as follows:

1. The pleadings fail to set forth a judgment of any court in any jurisdiction, and consequently there is no basis for the consideration of this court.

2. The claim as shown by the pleadings is barred by laches, and testimony must be elicited by the Court for a judicial determination thereon.

3. The fact that defendant has been beyond the jurisdiction of the State of Ohio is not, in itself, at all conclusive, and the question presents a genuine issue of fact for determination by the Court upon all the evidence to be presented.

4. The defendant's denial of indebtedness is not limited to the statute of limitation, as shown by the answer filed herein.

5. Equitable principles are applicable by the Court in a suit of this nature, and it would be impossible for the Court to reach a fair determination without hearing all the facts and circumstances to be shown by the testimony.

WHEREFORE, the premises considered, defendant prays dismissal of the Motion for Summary Judgment.

/s/ Rex K. Nelson
Rex K. Nelson
Attorney for Defendant
416 - 5th Street, N. W.

* * * *

5 Filed Jul 29 1950 Harry M. Hull, Clerk

Motion for Summary Judgment

Comes now the defendant and moves this Honorable Court for summary judgment in the above captioned cause, and for reasons therefor states as follows:

1. The complaint in the above captioned case sets for a claim for money only, and is not a judgment entitled to full faith and credit in this or any other jurisdiction.

2. Neither of the parties to this action is a resident of the District of Columbia, and the Court has no jurisdiction over the subject matter.

3. No issue of fact is involved in this motion, only questions of law, and the issue is for the determination of this court.

/s/ Rex K. Nelson
Rex K. Nelson
Attorney for Defendant
416 - 5th St., N. W.

* * * *

7 Filed Sep 18 1950 Harry M. Hull, Clerk

*Opposition to Defendant's Motion for
Summary Judgment*

Comes now the plaintiff and moves the Court to deny defendant's motion for summary judgment and for reasons therefor says as follows:

1. The complaint sets forth a final judgment entitled to full faith and credit.

2. The Court has jurisdiction over the parties and the subject matter.

LUBAR, O'KEEFE, FRIEDLANDER
& MELROD

By: /s/ Leonard S. Melrod
Leonard S. Melrod
Attorney for Plaintiff
200 Woodward Building
Washington, D. C.

* * * *

12 Filed Oct 18 1950 Harry M. Hull, Clerk

Order and Judgment

Upon consideration of the motion filed herein by the plaintiff for summary judgment in the amount of \$5040.00, plus interest, and of the motion of defendant for summary judgment and after oral argument heard thereon in open Court, it is this 18th day of October, 1950,

ORDERED and ADJUDGED That the motion for summary judgment filed in behalf of plaintiff be and the same is hereby granted and judgment is accordingly entered in favor of the plaintiff in the amount of \$5040.00, plus interest, and it is

FURTHER ORDERED that the motion of the defendant for summary judgment be and the same is hereby denied.

/s/ Alexander Holtzoff
Judge

Seen:

/s/ Leonard S. Melrod
Attorney for Plaintiff
/s/ Rex K. Nelson
Attorney for Defendant

• • • •

13 Filed Oct 23 1950 Harry M. Hull, Clerk

*Motion to Vacate Judgment and for
Rehearing of Defendant's Motion
for Summary Judgment*

Comes now the defendant, Dorsey E. Kinney, and moves this Honorable Court to vacate the judgment entered herein for the plaintiff and against the defendant, and for a rehearing on defendant's Motion for Summary Judgment, and for reasons therefor states as follows:

1. The maintenance order of the Ohio Court is not a judgment and is not entitled to full faith and credit in this or any other jurisdiction until reduced to judgment.

2. The judgment entered herein by this Court under date of October 18, 1950 is contrary to the laws of this jurisdiction and that of the State of Ohio.

And for such other and further reasons as will be brought to the attention of the Court upon hearing hereof.

/s/ Rex K. Nelson

Rex K. Nelson

Attorney for Defendant

416 - 5th Street, N. W.

* * * *

14 Filed Nov 3 1950 Harry M. Hull, Clerk

*Opposition to Motion to Vacate Judgment
and for Rehearing*

Comes now the plaintiff in the above-entitled cause and respectfully states to the Court that in opposition to the motion to vacate, the motion should be denied on the grounds that all matter contained in said motion was fully argued before the Court at the time Court ruled in favor of the plaintiff.

LUBAR, O'KEEFE, FRIEDLANDER
& MELROD

By /s/ Leonard S. Melrod

Leonard S. Melrod

Attorney for Plaintiff

200 Woodward Building

Washington, D. C.

* * * *

15. Filed Nov 27 1950 Harry M. Hull, Clerk

Order

Upon consideration of the defendant's motion filed herein to vacate the judgment and for rehearing and after oral argument heard thereon in open court, it is this 27th day of November, 1950,

12 A

ORDERED that the defendant's motion to vacate judgment and for rehearing be and the same is denied.

/s/ Alexander Holtzoff
Judge

Seen:

/s/ Rex K. Nelson
Attorney for Defendant

• • • •

16 Filed Dec 19 1950 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given this 18th day of December, 1950, that Dorsey E. Kinney hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27th day of November, 1950 in favor of Beryl L. Kinney against said Dorsey E. Kinney.

/s/ Rex K. Nelson
Attorney for
Dorsey E. Kinney

